

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Rudy A. Peche, III,

Case No. 23-cv-2974 (JMB/DJF)

Plaintiff,

v.

**ORDER**

Minnesota Department of Transportation and  
AFSCME,

Defendants.

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**IT IS HEREBY ORDERED THAT:**

1. Plaintiff Rudy A. Peche, III's application to proceed *in forma pauperis* (ECF No. [2]) is **GRANTED**.
2. Mr. Peche must submit a properly completed Marshal Service Form (Form USM-285) for each defendant. If Mr. Peche does not complete and return the Marshal Service Forms by **April 15, 2024**, the Court will recommend that this matter be dismissed without prejudice for failure to prosecute. The Court will provide Marshal Service Forms to Mr. Peche.
3. After Mr. Peche returns the completed Marshal Service Forms, the Court directs the Clerk of Court to seek waiver of service from defendant AFSCME, consistent with Rule 4(d) of the Federal Rules of Civil Procedure.
4. If a defendant fails without good cause to sign and return a waiver within 30 days of the date that the waiver is mailed, the Court will impose upon that defendant the expenses later incurred in effecting service of process. Absent a showing of good cause, reimbursement of the costs of service is mandatory and will be imposed in

all cases in which a defendant does not sign and return a waiver of service form. *See* Fed. R. Civ. P. 4(d)(2).

5. The Court directs the U.S. Marshals Service to effect service of process on defendant Minnesota Department of Transportation consistent with Rule 4(j) of the Federal Rules of Civil Procedure.
6. Mr. Peche's February 7, 2024 motion to amend (ECF No. [10]) is **DENIED AS MOOT** in light of the amended complaint Mr. Peche submitted on March 13, 2024 (ECF No. [15]). That amended complaint (ECF No. [15]) is now the operative pleading in this matter. *See* Fed. R. Civ. P. 15(a)(1).
7. Mr. Peche's motion to deny all of defendants' motions (ECF No. [9]) is **DENIED AS MOOT**. Defendants have not filed any motions (or participated in any way) in this lawsuit to date.
8. Mr. Peche's self-styled motion filed on January 2, 2024 (ECF No. [7]) is **DENIED**. The relief Mr. Peche requests is outside the Court's authority Court to grant.
9. Mr. Peche's motion to appoint counsel (ECF No. [14]) is **DENIED WITHOUT PREJUDICE**. It is not yet clear from the amended complaint and accompanying exhibits that Mr. Peche has filed suit on his claims within 90 days of issuance of a right-to-sue letter by the Equal Employment Opportunity Commission. Although Mr. Peche's failure to submit a right-to-sue letter and thereby establish the timeliness of his claims is not a basis for *sua sponte* dismissal of the complaint, *see* 28 U.S.C. § 1915(e)(2)(B), the potential that this matter may be dismissed in the very early stages on procedural grounds is reason not to commit judicial resources to appointment of counsel at this time, *see Crozier for A.C. v. Westside Community*

*School District*, 973 F.3d 882, 890 (8th Cir. 2020). In any event, Mr. Peche has stated the basis for his claims with reasonable clarity, his amended complaint has survived preservice review under § 1915(e)(2)(B), and, as a practical matter, there is nothing for appointed counsel to assist with at this time as Mr. Peche and the Court await the defendants' responses. The Court will reconsider the request for appointment of counsel should circumstances dictate.

Dated: March 15, 2024

s/ Dulce J. Foster

DULCE J. FOSTER

United States Magistrate Judge